

# **ELDER ABUSE TRAINING**

October 19, 2018  
Black Canyon Conference Center  
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## **FINANCIAL EXPLOITATION CASES: ASSET FORFEITURE REMEDY**

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Distributed by:

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## Financial Exploitation Cases: Asset Forfeiture Remedy

Joy L. Biedermann  
Deputy Yavapai County Attorney  
October 19, 2018

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## Asset Forfeitures



- ▶ Asset forfeiture laws allow law enforcement to seize property that is believed to be involved in a crime. This makes sense when property, including cars, firearms, or cash, is used to facilitate illegal activities, such as fraud, identity theft, or drug crimes.
- ▶ Civil forfeiture actions are legal actions against the property and not against the person or violator in possession of the property.

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## Burden of Proof



**Clear and convincing evidence:**  
**Evidence that is highly probable.**

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## A.R.S. § 13-4305 Seizure of Property

E. In establishing clear and convincing evidence and in determining probable cause for seizure and for forfeiture, a rebuttable presumption exists that the property of any person is subject to forfeiture if the state establishes all of the following by the standard of proof applicable to that proceeding:

1. Conduct giving rise to forfeiture occurred.
2. The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period.
3. There is no likely source for the property other than the conduct giving rise to forfeiture.

F. In establishing clear and convincing evidence and in determining probable cause for seizure and for forfeiture, the fact that money or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money or instrument was the proceeds of contraband or was used or intended to be used to facilitate commission of the offense.

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## Evidence

Seizing property for evidence versus seizing property for forfeiture is an important distinction.




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## Request for Forfeiture

1. Pursuant to A.R.S. § 13-4306(C) and (F), this written request for forfeiture is presented to the Yavapai County Attorney's Office within twenty (20) days of the seizure for forfeiture.

2. The seizing agency was: \_\_\_\_\_.

3. The following property has been seized and is subject to civil forfeiture pursuant to A.R.S. §§ 13-4301, et. seq.; 13-2314; 13-3413 and/or other civil forfeiture statute (e.g. 13-3105):

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### Request for Forfeiture Continued

ITEM #	TYPE OF PROPERTY	DESCRIPTION OF PROPERTY SEIZED (include a complete description, make, model, color, State license plate, VIN, SERIAL NUMBER, etc.)	ESTIMATED VALUE	ENCUMBRANCE (please list name of lienholder and amount of lien, if known)
			\$	
			\$	

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### Request for Forfeiture Continued

Listing items of evidence more precisely with serial numbers, VIN, etc. is more important than ever.

- ▶ Plea Agreements
- ▶ Civil Forfeiture actions




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### Request for Forfeiture Continued

4. The original seizure (for any purpose, e.g. evidence) of the property took place at \_\_\_\_\_ (location).
5. The seizure of the property for forfeiture (civil forfeiture) took place on \_\_\_\_\_ (date) at \_\_\_\_\_ (location).
6. The violation of law (criminal) alleged is \_\_\_\_\_ (statutes) \_\_\_\_\_ (description of offense).

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## Request for Forfeiture Continued

7. The following information is attached to this request:

- a. A detailed description of the property seized, as well as a list of the persons known to have an interest therein (as defined) in A.R.S. §13-4301(6).
- b. A statement of facts and circumstances of the seizure including the names of witnesses known at this time and a summary of the facts relied on for forfeiture in the copy of police report/DR.

8. The following persons are known to have an interest in the property listed below (please also indicate name of spouse, if known):

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## Request for Forfeiture Continued

ITEM # (from No. 3 above)	NAME OF INTEREST HOLDER(S)/OWNER(S)	ADDRESS(ES)

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## A.R.S. § 13-4311 Judicial In Rem Proceedings

► I. An injured person may submit a request for compensation from forfeited property to the court at any time before the earlier of the entry of a final judgment or an application for an order of the forfeiture of the property, or if a hearing pursuant to subsections K, L and M of this section is held, not less than thirty days before the hearing. The request shall be signed by the requestor under penalty of perjury and shall set forth all of the following:

- 1. The caption of the proceeding as set forth on the notice of pending forfeiture or complaint and the name of the requestor.
- 2. The address at which the requestor will accept future mailings from the court or parties to the action.

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## A.R.S. § 13-4311 Continued

- ▶ 3. The property subject to forfeiture from which the requestor seeks compensation.
- ▶ 4. The nature of the economic loss sustained by the requestor.
- ▶ 5. All facts supporting each such assertion.
- ▶ 6. Any additional facts supporting the request.
- ▶ 7. The amount of economic loss for which the requestor seeks compensation.

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## A.R.S. § 13-4311 Continued

- ▶ N. In accordance with its findings at the hearing:
- ▶ 3. If the court finds that a requestor is an injured person the court shall determine the amount of the injured person's economic loss caused by the conduct giving rise to the forfeiture of the designated property and shall require the following:
  - ▶ (a) If the designated property is not contraband and is not altered or designed for use in conduct giving rise to forfeiture, the attorney for the state shall sell the property as provided in section 13-4315, subsection A, paragraph 2 and shall apply the resulting balance to compensate the injured person's economic loss in the amount found by the court.
  - ▶ (b) If the balance is insufficient to compensate the economic loss of all injured persons the attorney for the state shall distribute the balance among the injured persons according to a method determined by the court.
  - ▶ (c) After compensation of all injured persons, the attorney for the state shall transmit ten percent of the remaining balance, if any, to the Arizona criminal justice commission for deposit in the victim compensation and assistance fund established by section 41-2407.

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## Examples of Cases



- ▶ Victim Cases
- ▶ Not much likelihood of finding criminal defendants in Arizona to prosecute.
- ▶ What happens with these cases is important and has real life consequences.

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## \$30,000 Recovered for Elderly Victim of Fraud



- Press Release from August 8, 2017:
- Using Arizona's civil asset forfeiture laws, the Yavapai County Sheriff's Office and Yavapai County Attorney's Office quickly seized \$30,000 from a fraud scheme and returned it through court action to an elderly victim.

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## \$30,000 Recovered Continued

- The fraud began when a person going by the name of "Jonh Caldwell" contacted a Prescott widow, age 89, through e-mail and social media. "Jonh" claimed to be an American military general who needed money to leave the war zone in Syria and/or Iran. Over a period of time, the widow was misled into believing she was assisting "Jonh" to escape the war and return to the United States. "Jonh" expressed his concerns about the war escalating, professed his love to the widow, and convinced her that she was the only one who could help him. He also promised to repay the funds to her when they could be together. "Jonh Caldwell" and another person by the name of "Mills," who claimed to be associated with the United Nations, defrauded the widow of over \$60,000 in several transactions.

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## \$30,000 Recovered Continued

- The widow's son reported the fraud to the Yavapai County Sheriff's Office after learning that his mother had just transferred \$30,000 to the fraudster's bank account. Upon review of the e-mails, Google chat and Facebook correspondence between the widow and the fraudsters, the detectives noticed numerous grammar and spelling errors in the emails from "Jonh Caldwell" and "Mills" which is often consistent with fraudulent schemes. The Yavapai County Sheriff's Office responded quickly using the asset forfeiture laws to freeze \$30,000 in funds in the fraudster's bank account before "Jonh" could transfer the money beyond the reach of law enforcement.
- The Yavapai County Attorney's Office then filed in court a civil forfeiture action and successfully obtained a court order to forfeit the \$30,000. That money was delivered yesterday to the widow by the County Attorney's Office.

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## \$30,000 Recovered Continued

- Yavapai County Attorney Sheila Polk stated: "We are all very thankful for the quick actions of the Sheriff's Office in freezing the fraudster's bank account to save at least some of the widow's money. This case illustrates what an important tool Arizona's civil asset forfeiture laws are in the fight against financial fraud, especially in cases involving our senior citizens. Asset forfeiture laws allow us to pursue the recovery of funds even when the wrongdoer is beyond our jurisdiction for criminal charges."
- The Yavapai County Sheriff's Office has referred the case for criminal investigation to Massachusetts, the last known location of the suspects.

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## \$15,500 Recovered for Elderly Couple of Fraud



- Press Release from September 15, 2017:
- Using Arizona's civil asset forfeiture laws, the Cottonwood Police Department and Yavapai County Attorney's Office quickly seized \$15,500 from a fraud scheme and returned it through court action to an elderly couple.

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## \$15,500 Recovered Continued

- The incident involves a Camp Verde elderly couple who was defrauded of \$15,500 by a "computer company" that offered to provide lifetime maintenance of the couples' home computers. After making a "sale" of services to the victims, the company later contacted the victims and offered to wire a refund of \$1,000 to the victims' bank account. Through an elaborate scam, the "company" was able to gain access to the elderly couple's bank account and mimic deposits by transferring a large amount of the couple's own money from their savings account to their checking account. The scammers then convinced the victims to return this "overpayment" by depositing the funds into an account controlled by the scammers.

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## \$15,500 Recovered Continued

- The victims were subsequently notified their bank account had been flagged for possible fraudulent activity. The victims' bank account and the bank accounts of "Samairur Rhaman Talaukder" and "A Kahn" were all frozen. The victims reported the incident to the Cottonwood Police Department which was able to seize \$15,500 from the scammers' accounts before the scammers had an opportunity to transfer the money out of the reach of law enforcement.

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## \$15,500 Recovered Continued

- The couple was defrauded of almost \$18,000, of which \$15,500 was recovered through the efforts of the banks and law enforcement. The Yavapai County Attorney's Office filed a civil forfeiture action and obtained a court order to forfeiting the \$15,500. The funds were returned to the victims this week.
- Yavapai County Attorney Sheila Polk stated, "We are all very thankful for the quick actions of the Cottonwood Police Department to recover this elderly couple's money. This is another case that illustrates what an important tool Arizona's civil asset forfeiture laws are in the fight against financial fraud, especially in cases involving our senior citizens. Asset forfeiture laws allow us to pursue the recovery of funds even when the wrongdoer is beyond our jurisdiction for criminal charges."

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## A.R.S. § 13-4314 Disposition by Court

- F. The court may award reasonable attorney fees, expenses and damages for loss of the use of the property to any claimant who substantially prevails by an adjudication on the merits of a claim. If the court finds that reasonable cause did not exist for the seizure for forfeiture or the filing of the notice of pending forfeiture, complaint, information or indictment and that the seizing agency or attorney for the state intended to cause injury or was grossly negligent, the court shall award the claimant treble costs or damages. The court must apportion the award for treble costs or damages between the agency that made the seizure and the office of the attorney for the state.

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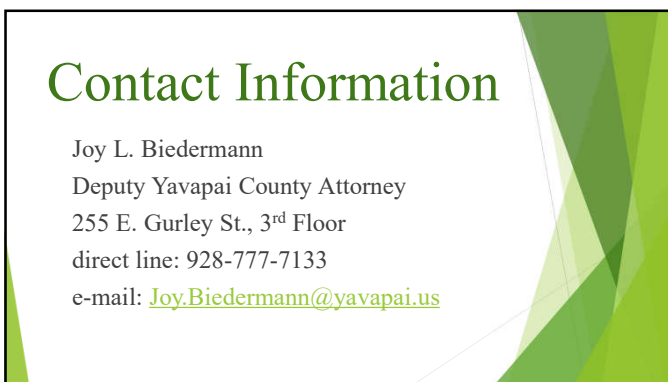
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